



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0545; FRL-9941-72-Region 9]

Disapproval of California Air Plan Revisions, South Coast Air

Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing disapproval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on November 24, 2015 and concerns rules regulating Vehicle Scrapping, Employee Trip Reduction, and procedures for the hearing board concerning variances and subpoenas. The submitted SCAQMD rules are discretionary and this disapproval does not reveal a deficiency in the SIP.

**EFFECTIVE DATE:** This rule is effective on [**Insert date 30 days from the date of publication in the Federal Register**].

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2015-0545 for this action. Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at EPA Region IX, 75

Hawthorne Street, San Francisco, California 94015-3901. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972-3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to the EPA.

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### **I. Proposed Action.**

On November 24, 2015 (80 FR 73156), the EPA proposed to disapprove the following rules that were submitted for incorporation into the California SIP.

Local Agency	Rule #	Rule Title	Adopted or Amended	Submitted
SCAQMD	1610	Old-Vehicle Scrapping	05/09/97	06/03/97
SCAQMD	2202	On-Road Motor Vehicle Mitigation Options	10/09/98	06/03/99
SCAQMD	503.1	Ex Parte Petitions for Variances	02/05/88	02/07/89
SCAQMD	504	Rules from which Variances Are Not Allowed	01/05/90	05/13/91
SCAQMD	511.1	Subpoenas	02/05/88	02/07/89

We proposed to disapprove these rules because some rule provisions do not satisfy the requirements of section 110 and part D of the Act.

We proposed to disapprove the SIP revision for Rule 1610 based at least in part on the following deficiencies:

1. The Section (e) (2) requirement that engines of scrapped vehicles be destroyed is insufficiently federally enforceable for various reasons.
2. The Section (f) (2) (A) requirement that the vehicle be registered for two years within SCAQMD is not fully

enforceable by allowing the Executive Officer to approve different documentation.

3. The Section (g) requirement of a visual and functional inspection of the vehicle has no recordkeeping requirements.
4. There is no recordkeeping requirement to demonstrate compliance with the Section (g)(1) requirement that vehicles be driven under their own power to the scrapping site.
5. There is no requirement to maintain records for the life of Mobile Source Emission Reduction Credits.

We proposed to disapprove the SIP revision for Rule 2202 based at least in part on the following deficiencies:

1. Per Section (f)(1), the rule relies on Regulation XVI, which is not currently in the SIP.
2. Per Section (f)(3), the rule relies on the Air Quality Investment Program (Rule 2501), which is not currently in the SIP.
3. Per Section (f)(4), the rule relies on emission reduction strategies approved on a case-by-case basis by the Executive Officer.
4. Per Section (g)(4), the rule relies on vehicle miles

travelled reduction programs approved on a case-by-case basis by the Executive Officer.

We proposed to disapprove the SIP revision for Rules 503.1 and 504 because they conflict with CAA sections 110(a) and (i) and fail to address that a state- or district-issued variance has no effect on enforcing the underlying federal requirement unless the variance is submitted to and approved by EPA as a SIP revision.

We proposed to disapprove the SIP revision for Rule 511.1 to avoid potential conflict with EPA's independent authorities provided in CAA section 113, section 114 and elsewhere.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

## **II. Public Comments and EPA Responses.**

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## **III. EPA Action.**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is finalizing a full disapproval of the submitted rules. This final disapproval does not trigger sanctions or a requirement

for the EPA to issue a federal implementation plan (FIP). Sanctions will not be imposed under CAA 179(b) because the submittal of Rules 1610, 2202, 503.1, 504 and 511.1 is discretionary (i.e., these rules are not required to be included in the SIP), and the EPA will not promulgate a FIP in this instance under CAA 110(c)(1) because the disapproval does not reveal a deficiency in the SIP for the area that such a FIP must correct. Specifically: (1) Rule 1610 is voluntary and only serves to provide for an alternative method of compliance for stationary and other emission sources subject to other District regulations that allow the use of credits as a compliance option; and (2) Rule 2202 is not a required CAA submittal because the CAA gives state and local agencies discretion, but does not require, employers "to implement programs to reduce work-related vehicle trips and miles travelled by employees" (see CAA section 182(d)(1)(B)). Additionally, at this time, we have not credited emission reductions from Rules 1610 or 2202 in an approved SIP and we are not aware of a SCAQMD plan submitted to EPA that relies on emission reductions from these rules to fulfill a CAA requirement. Accordingly, the failure of the SCAQMD to adopt revisions to Rules 1610 and 2202 would not adversely affect the SIP's compliance with the CAA's

requirements, such as the requirements for section 182 ozone RACT, reasonable further progress, and attainment demonstrations. Rules 503.1, 504 and 511.1 regulate hearing board procedures and do not control emission sources or otherwise generate emission reductions nor are they required elements of the SIP. Thus, EPA does not need to impose sanctions or promulgate a FIP upon their disapproval. Note that the submitted rules have been adopted by the SCAQMD, and a final disapproval by the EPA would not prevent the local agency from enforcing them or the revised versions of these rules subsequently adopted by SCAQMD as a matter of State law.

#### **IV. Statutory and Executive Order Reviews.**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA, because this SIP disapproval does not in-and-of itself create any new information collection burdens, but simply disapproves certain State requirements for inclusion in the SIP.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion in the SIP.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will



not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create

any new regulations, but simply disapproves certain State requirements for inclusion in the SIP.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Nitrogen dioxide, Ozone, Particulate matter, Reporting and  
recordkeeping requirements, Volatile organic compounds.

Dated: January 14, 2016.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

**Subpart F - California**

2. Section 52.242 is amended by adding paragraphs (a)(1)(iv), (v), (vi), (vii) and (viii) to read as follows:

**§52.242 Disapproved rules and regulations.**

(a) \* \* \*

(1) \* \* \*

(iv) Rule 511.1, "Subpoenas," submitted on February 7, 1989.

(v) Rule 503.1, "Ex Parte Petitions for Variances," submitted on February 7, 1989.

(vi) Rule 504, "Rules from which Variances Are Not Allowed," submitted on May 13, 1991.

(vii) Rule 1610, "Old-Vehicle Scrapping," submitted on June 3, 1997.

(viii) Rule 2202, "On-Road Motor Vehicle Mitigation Options," submitted on June 3, 1999.

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